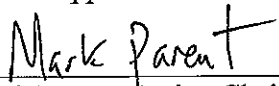


Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2014-00015, to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District), with conditions.

1. This permit allows the modification of conditions related to the approved building plans, site plan, and landscaping plans only. All other conditions of ZBA FY2012-00021 and ZBA FY2014-00001 remain in effect.
2. The renovation and additions shall be built substantially in accordance with the plans prepared by Kraus-Fitch, dated December 17, 2013:
 - a. Sheet A1.1, Upper Floor Plan
 - b. Sheet A1.0, Lower Floor Plan
 - c. Sheet A2.0, Front and Left Elevations
 - d. Sheet A2.1, Rear and Cross Section
3. All rooms shall be used as labeled on the approved floor plans.
4. Prior to the issuance of a building permit, a final Site Plan, based on the Site Plan prepared by Kraus-Fitch Architects, last revised 2/3/14, shall be submitted to the Board for review and approval at a public meeting showing the following:
 - a. The driveway and parking areas as proposed
 - b. A more detailed planting plan for the area along the southeast property line pursuant to Condition # 9 of the 2012 Special Permit. Prior to presenting the proposed planting plan, the applicant shall work with staff to determine that the plan is sufficient to meet the requirements of Condition #9. The Board shall conduct a site visit prior to the public meeting to view the area.
5. Prior to the issuance of a final Certificate of Occupancy:
 - a. The driveway and parking areas shall be installed and built substantially in accordance with the approved site plan and be designed and constructed to meet the requirements of Section 7.101 of the Zoning Bylaw.
 - b. The planting plan for the south east side of the property shall be in place.
 - c. All other improvements as shown on the approved plans are completed.
 - d. All other conditions of the other Special Permits have been met.
6. The fence adjacent to the parking area shall be located as shown on the Site Plan and shall be substantially similar to the sample approved.
7. The siding for the new addition may be vinyl and shall be substantially similar to the sample approved.


Mark Parent, Acting Chair
Amherst Zoning Board of Appeals


DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Michael Ben-Chaim, Unit 91, Colonial Village, Amherst, MA 01002

Date application filed with the Town Clerk: January 13, 2014

Nature of request: For a Special Permit to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan

Address: 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)

Legal notice: Published on January 8, 2014 and January 15, 2014 in the Daily Hampshire Gazette and sent to abutters on January 3, 2014

Board members: Mark Parent, Yuri Friman, Pari Riahi

Staff members: Jeff Bagg, Senior Planner, Robert Morra, Building Commissioner

Submissions:

- Project Application Report, dated January 17, 2014
 - Elevation and Section, Sheet A2.1
- Application form filed with the Town Clerk on January 13, 2014
- Introduction to the change in building plan
- Summary of the change in landscaping plan
- Review of Design Review standards
- Two existing conditions photographs
- The following plans prepared by Kraus-Fitch Architects, dated December 16, 2013:
 - Site Plan, Sheet A0
 - Lower floor plan, Sheet A1.0
 - Upper floor plan, Sheet A1.1
 - Elevations, Sheet A2.0
- ZBA FY2012-00021, including all approved plans
- Section 3.2040 & 3.2041, Design Review Principles and Standards
- DRB review letter, June 26, 2012
- Historical Commission letter, June 28, 2012
- ZBA FY2014-00001, to modify conditions of the 2012 permit related to the use
- September 17, 2013 email and packet of material submitted to the Board for the September 26, 2013 public meeting

Site Visit: January 21, 2014

Mark Parent, Yuri Friman, and Pari Riahi met the applicant, Michael Ben-Chaim, on-site. They observed the location of the property along the east side of Shays Street, and the following:

- The existing buildings on the property including the single family dwelling and detached garage. The approximate location of the existing parking area, shed structure and existing means of egress for both buildings.
- The approximate location of the south east property line.

Public Hearing: January 23, 2014

The applicant, Michael Ben-Chaim, presented the application. It was noted that he appeared before the Board at the public meeting of September 26, 2013, to request the Board consider changes to the design and landscaping as de minimus. At that time, the Board determined that the changes required that the 2012 Special Permit (ZBA FY2012-00021) be modified. The changes, as shown on the submitted plans, is summarized as follows:

- This request is to modify several conditions of the 2012 Special Permit to allow changes in the approved building design, and changes to the approved landscaping plan.
- The approved building will be downsized including a reduced footprint and reduced height. The existing detached garage would be renovated rather than demolished and the size of the addition to connect to the two buildings would be smaller.
- The landscaping plan would be modified to remove many of the plantings that were shown on the approved plan, mainly in front of the new building and addition.
- The applicant provided a detailed review of how the proposed changes comply with the Design Review Board criteria and findings under Section 3.2040 and stated that the proposed changes still comply with those provisions.

The Board noted the following regarding the changes to the approved building plans:

- The privacy fence originally approved is removed.
- The renovated detached structure includes the addition of a dormer on the north elevation
- The existing shed structure and lattice will remain. A new shingled roof will be installed on it and the lattice painted.
- The renovated detached structure and new addition will be covered in vinyl siding. The exterior of the house will remain as wood clapboard.

The Board concluded that no aspect of the use as a two family dwelling approved in the 2012 permit is changing as part of this request. The other relevant conditions of that permit will remain in effect. It was noted that changes to the number of occupants allowed in the rented unit was changed from three to four in ZBA FY2014-00001 and the those conditions associated with that will remain in effect.

After discussion, the Board determined that the changes to the approved building plans result in an overall reduction in the size of the project. Additionally, the Board determined that the changes to the plans include a reduction in the size of the addition and a renovation of the existing detached structure rather than demolition and that these changes continue to meet the DRB criteria and standards of Section 3.2040 and 3.2041.

The Board discussed the changes to the approved landscaping plan. The applicant stated that he believed that the Bylaw does not require landscaping as part of this type of project. He explained that instead of the plantings, effort would be given to cleaning, pruning, and maintaining other portions of the property that have become overgrown and historically have not been cared-for.

The Board discussed the parking areas:

- The two parking spaces at the north side of the property were oriented toward the abutting property to the South and should be changed so they are oriented away from that property, as shown on the previously approved site plan.
- It was noted that the fence shown on the plan is not adequately labeled or arranged to provide screening from vehicle headlights.

- The small retaining wall and planter were in disrepair and during the site visit were noted as to be removed.
- The existing driveway and parking areas appear to be dirt, and may need to be upgraded to meet the current design and construction standards.
- A drainage basin originally shown in the previously approved plans is removed.

The following members of the public spoke regarding the application:

- Avril De La Cretaz, 31 Shays Street, stated that she and her neighbors attended several hearings in 2012 and expressed concern that now the Board is considering changes what was approved. She stated that they felt supported by the overall decision to reduce the occupants to three, but that was changed. Now the removal of the landscaping is troubling because it was intended to improve the visual appearance of the property in the neighborhood.
- Simon Keochakian, 76 Shays Street, stated that he never supported the use in terms of compatibility with the neighborhood. However, he relied on the whole of the previous Zoning Boards decision to require the landscaping as a way to mitigate the proposed change in use. He stated that the Board should not allow any changes to the approved landscaping plan because other aspects of the proposal have already been changed, such as the number of people allowed to rent the house. He also questioned the integrity of the foundation for the detached structure and whether it was capable of being renovated.
- Jim Phaneaf, 38 Shays Street, stated that he owns the property to the east, known as the Frank Lloyd Wright house. He expressed concern that the additional plantings along the southeast property line required in 2012 have not been implemented. He urged the Board to maintain that requirement because without it would undermine an important part of the 2012 decision.
- Bill Cray, 41 Shays Street, stated that the Board should not accept any of the changes as the whole project was well vetted in 2012 and that the first panel reached a good conclusion.
- Jean Hoffman, 38 Shays Street, expressed concern that this Board does not have the same information that the previous Board and should not alter that decision. She stated that screening between the subject property and their property is very important.

Mr. Parent stated that he understands the concerns regarding landscaping, but noted that the previously approved plan required considerable plantings, most likely to reduce the visual impact of the larger building. The size and scope of the project is smaller and likely that less landscaping would be necessary.

Ms. Riahi stated that she can understand that the reduction in the size of the building may be an enhancement with regard to the compatibility of the neighborhood. However, she would like to see the landscaping approved in 2012 be implemented. Mr. Friman agreed, noting that the plans went from a fully development landscaping plan to nothing.

The Board discussed the screening along the south east property line and Condition #9 of the 2012 permit. The Board requested that the applicant consider providing this information as part of this request.

The Board requested that the applicant come back with the following:

- A more detailed landscaping plan and one that details areas that would be improved or maintained.
- A planting plan for the south east property line as required under Condition # 9 of the 2012 permit. The Board noted that they believe this should be considered as part of the landscaping plan.
- A revised site plan showing the removal of the small retaining wall and brick rubble and the reorientation of the two parking spaces towards the north side of the property.

Mr. Parent MOVED to continue the evidentiary portion of the public hearing to February 6, 2014. Ms. Riahi seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Hearing: February 6, 2014

The following new information was provided:

- Aerial photograph, topographic map, and site photographs (x3) taken in June, 2013
- Vinyl siding sample
- Stockade fence detail/sample
- Planning Department photographs, taken in February, 2014

The applicant, Michael Ben-Chaim, presented the new information, summarized as follows:

- Referring to the revised site plan, he indicated that:
 - The two parking spaces at the north of the property have been reoriented away from the southerly abutting property.
 - A three foot tall wood stockade fence is relocated closer to the parking area for screening. A photograph shows the type of fence.
 - A line is shown on the site plan showing the separation of the gravel parking area from the gravel area in front of the renovated detached structure.
 - The existing small retaining wall is noted as to be removed and the area will be graded to a uniform slope
 - Areas of the property are shown as to be cleared of rubbish, trimmed and left in natural state
- Referring to the submitted photographs taken in June, he indicated that there is significant vegetation along the south property line. As shown on the submitted site plan, there is a steep change in topography and noted that seven shrubs will be installed along the top of the ridge.

Mr. Friman MOVED to close the evidentiary portion of the public hearing. Ms. Riahi seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting/Findings:

The Board discussed the area in front of the detached structure to be renovated. The Board determined that although no landscaping is provided, the removal of the small retaining wall along with the re-grading would be sufficient to better organize the area. The Board noted that the proposed boulders would need to remain in place to provide the delineation between the driveway and parking area and the other gravel surface.

The Board discussed the parking area and driveway. Mr. Bagg noted that the plan depicts that both are labeled as existing gravel areas. He showed photographs taken last June which show that the driveway and parking areas are mostly dirt and do not contain much gravel surface.

The Board requested that a final site plan be submitted which labels the areas as proposed, and noted that a condition of the permit would require that these areas be upgraded to meet the design and construction standards of Section 7.101 of the Zoning Bylaw.

The Board discussed the landscape screening plan for along the south east property line. The Board determined that the plan did not contain sufficient information to determine whether the plantings would be sufficient to meet the requirements of Condition # 9 of the 2012 permit. The board noted that none of the existing vegetation is shown and it was difficult to determine how effective seven randomly placed shrubs would be. The Board requested that the applicant work with staff to prepare a workable plan. Once that was completed, the plan would be subject to review and approval by the Board at a public meeting. Finally, prior to reviewing the plan, the Board requested a site visit to view the location of the plantings on-site.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

The Board found that the reduction in the size of the addition and change from demolition to renovation of the existing detached structure makes the project more compatible and suitable in the neighborhood. The use as a two family dwelling is not being changed, therefore the relevant findings from the 2012 permit remain valid as they pertain to the use. The Board found that the removal of landscaping in front of the dwelling was acceptable based primarily on the reduced size of the project. A condition of the permit requires that a small retaining wall and rubble be removed the area be graded to a uniform slope. The parking area to the north was reoriented to the same location approved in 2012 to be more compatible with the adjacent properties. The plan provides for areas of the property to be cleared of rubbish and trimmed.

10.382, 10.383 & 10.385 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* The Board found that the requirement to provide additional screening along the southeast property line would reduce the potential visual impact of the proposal on the abutting property. The proposal includes the same parking area screening fence to prevent headlight glare on the abutting property to the north.

10.386 & 10.387 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw; The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements...* The Board found that a condition of the approval requires that the plan be revised to show that the driveway and parking areas will be proposed and therefore will be required to be upgraded to the design and construction standards of Section 7.101. The upgraded areas along with the boulders are intended to better delineate the areas of parking from the gravel area in front of the detached garage to be renovated. The reorientation of the parking area to the north prevents potential issues related to headlight glare and a screening fence is required adjacent to the other

parking area. The removal of the small retaining wall and rubble along with the re-grading of the area in front of the unit will provide better pedestrian movement within the site.

10.395 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. The Board found that the reduced size of the project, along with the changes from demolition to renovation, ensure that the proposal will be in harmony with the existing single family dwelling on the property and will minimize the amount of change to the property with respect of the neighborhood.

10.398- The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The Board found that the overall changes to the proposed building design are a reduction and therefore more in harmony with the purposes of the Bylaw. The removal of specific landscaping in front of the dwelling allows the applicant to clear and trim the remaining areas of the property. Finally, the requirement for additional screening along the south east property line remains. The Board found that the relevant findings from the 2012 permit remain valid as they pertain to the use as a two family dwelling.

Zoning Board Decision

Mr. Parent MOVED to approve the application with conditions. Ms. Riahi seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2014-00015, to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District), with conditions.

Mark Parent (28) Yuri Friman Pari Riahi
MARK PARENT YURI FRIMAN PARI RIAHI

FILED THIS 7th day of March 2014 at 2:43 pm,
in the office of the Amherst Town Clerk Vendia J. Burger,
TWENTY-DAY APPEAL period expires, March 27 2014,
NOTICE OF DECISION mailed this 10 day of March, 2014,
to the attached list of addresses by Jeffrey R. Bay, for the Board.
COPY OF NO APPEAL issued this _____ day of _____, 2014.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2014,
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Michael Ben-Chaim

For A Special Permit to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan

On the premises of 28 Shays Street

At or on Map 20A, Parcel 15, R-N Zoning District

NOTICE of hearing as follows mailed (date) January 3, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated January 8, 2014 and January 15, 2014

Hearing date and place January 23, 2014 (Town Hall)

LEGAL NOTICE
The Amherst Zoning Board of Appeals will meet on *Thursday, January 23, 2014*, at 6:30 P.M. in the Town Room, Town Hall, to conduct the following business:
PUBLIC HEARING:
ZBA FY2014-00010
- Juliana Dupre - For a Special Permit to erect a fence taller than four feet within multiple front yard setbacks, under Section 6.29 of the Zoning Bylaw, at 9 Chesterfield Drive (Map 16D, Parcel 142, R-N Zoning District)
ZBA FY2014-00015 - Michael Ben-Chaim - For a Special Permit to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District)
ERIC BEAL, CHAIR
AMHERST ZONING BOARD OF APPEALS
3282593 January 8, 15

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, ZBA FY2014-00015, to modify conditions of ZBA FY2012-00021, to allow changes to the approved building plans and landscaping plan, at 28 Shays Street (Map 20A, Parcel 15, R-N Zoning District), with conditions.

Mark Parent - Yes Yuri Friman - Yes Pari Riahi - Yes

DECISION: APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Michael Ben-Chaim
Address Unit 91, Colonial Village
City or Town Amherst, MA 01002

Identify Land Affected: 28 Shays Street
(Map 20A, Parcel 15, R-N Zoning Districts)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

28 Shays Street Amherst
Street City or Town

The record of title standing in the name of
Michael Ben-Chaim
Name of Owner

Whose address is Unit 91, Colonial Village Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 10642 Page 326
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2014-00015
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Mark Parent (JB) Chairman
(Board of Appeals)
Yuri Friman (JB) Clerk
(Board of Appeals)

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____
Register of Deeds
Notice to be recorded by Land Owner

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
17C-27	SHAYS ST	HOFFMAN, JEAN		74 OLD STAGE RD	WEST HATFIELD, MA 01088-9513
20A-14	2 SHAYS ST	TZENG, YOU PAN & HAN, SUSAN	C/O VALLEY PROPERTY MANAGEMENT	P.O. BOX 3649	AMHERST, MA 01004-3649
20A-32	5 SHAYS ST	KEOCHAKIAN, GREGORY & SYLVIA		5 SHAYS ST	AMHERST, MA 01002
20A-15	28 SHAYS ST	BEN-CHAIM, MICHAEL		28 SHAYS ST	Amherst, MA 01002
20A-31	31 SHAYS ST	DE LA CRETAZ, AVRIL		PO BOX 3045	AMHERST, MA 01004-3045
20A-17	38 SHAYS ST	HOFFMAN, JEAN		74 OLD STAGE RD	WEST HATFIELD, MA 01088-9513
20A-30	41 SHAYS ST	CRAY, WILLIAM J & SABINE H		41 SHAYS ST	AMHERST, MA 01002
20A-164	49 SHAYS ST	ACKERMAN, TEDD H		49 SHAYS ST	AMHERST, MA 01002
20A-18	52 SHAYS ST	HANNIGAN, SAMUEL T & TAMMY M		52 SHAYS ST	AMHERST, MA 01002
20A-42	59 SHAYS ST	ACKERMAN, JENNIFER		375 SHAYS ST	AMHERST, MA 01002
17C-60	130 WEST ST	SHEN, TONG & YIN, XIAOLING		130 WEST ST	AMHERST, MA 01002
17C-24	136 WEST ST	FURCOLO, TINA L & HIGHAM, DAVID G		136 WEST ST	AMHERST, MA 01002
17C-25	144 WEST ST	CZAP, MARGOT		144 WEST ST	AMHERST, MA 01002
17C-26	152 WEST ST	CAMPBELL, ANDREW C & FLYNN, SIMONE I		152 WEST ST	AMHERST, MA 01002

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
20A-3	165 WEST ST	GOLDSTEIN, WARREN J	SCHAPER, DONNA E	235 EAST 18TH ST	NEW YORK, NY 10003
20A-33	188 WEST ST	FENNER, HEINRICH & EVA MARIA		188 WEST ST	AMHERST, MA 01002
20A-34	196 WEST ST	GRYBKO, CHARLES V		196 WEST ST	AMHERST, MA 01002